

SERVICE DATE – SEPTEMBER 28, 2017

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 290 (Sub-No. 388X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN ATLANTA, GA.

Decided: September 27, 2017

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 1.0 mile of rail line between milepost DF 632.10 and milepost DF 633.10 in Atlanta, Ga. (the Line).¹ Notice of the exemption was served and published in the Federal Register on August 3, 2017 (82 Fed. Reg. 36,182). The exemption became effective on September 2, 2017.

On September 1, 2017, the Atlanta BeltLine, Inc. (ABI), late-filed a request for the issuance of a notice of interim trail use or abandonment (NITU) to negotiate with NSR for acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.² Pursuant to 49 C.F.R. § 1152.29, ABI has also submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a letter filed on

¹ The Board's authorization is subject to employee protective conditions, and by a decision served on September 1, 2017, two environmental conditions were imposed that require NS to: (a) consult with and notify the National Geodetic Survey at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers; and (b) prior to commencement of any salvage activities, consult with the U.S. Army Corps of Engineers regarding potential impacts to waters of the United States, including wetlands, and comply with the reasonable requirements of any permits issued by the Corps. The environmental conditions remain in effect.

² Requests for interim trail use/rail banking were to be filed by August 11, 2017. See Norfolk S. Ry.—Aban. Exemption—in Atlanta, Ga., AB 290 (Sub-No. 388X) (STB served August 3, 2017). However, in Abandonment & Discontinuance of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that ABI's late-filed request will prejudice any party, it will be accepted.

September 5, 2017, NSR notified the Board that it is willing to negotiate with ABI for interim trail use.

Because ABI's request complies with the requirements of 49 C.F.R. § 1152.29 and NSR is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, NSR may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. ABI's late-filed request for a NITU under 16 U.S.C. § 1247(d) is accepted and granted.
3. Upon reconsideration, the notice served and published in the Federal Register on August 3, 2017, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit ABI to negotiate with NSR for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until March 27, 2018.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by March 27, 2018, interim trail use may be implemented. If no agreement is reached, NSR may fully abandon the Line, subject to any outstanding conditions.

9. This decision and notice is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.